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WEYERHAEUSER COMPANY INTELLECTUAL PROPERTY DEPT., CH 1J27 P.O. BOX 9777 FEDERAL WAY, WA 98063			EXAMINER GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,969	Applicant(s) STOYANOV ET AL.	
	Examiner Keshia Gibson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 2-3, filed 11/14/05, with respect to the rejection(s) of claim(s) 1-20 under 35 USC 102/103 and 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Fujitani et al. (US 5,855,624) and Hamajima et al. (US 6,068,619).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-6, 8-14, and 17-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fujitani et al. (US 5,855,624).

In regard to Claims 1-4 and 14, Fujitani et al. disclose an absorbent article comprising cellulosic fibers reacted with a crosslinking agent in the presence of a polyol (whole document, especially column 2, line 20-column 7, line 24). Fujitani et al. do not expressly disclose that the crosslinked cellulosic fibers are characterized by a Whiteness Index greater than about 69.0. Fujitani et al. also do not expressly disclose a specific range for the L value, a value, b value, and percent ISO brightness of the individualized intrafiber crosslinked cellulosic fibers. However, when the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, cellulosic fibers reacted with a crosslinker and a polyol) except for a property or function (in the present case, the individualized intrafiber crosslinked cellulosic fibers are characterized by a Whiteness Index greater than about 69.0) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof.

In regard to Claims 5-6 and 8, the polycarboxylic acid may be citric acid.

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In regard to Claims 9-13, the polyol may be sorbitol (column 5, line 12). Claims 11-13 are considered anticipated since presence of sorbitol anticipates the Markush group of Claim 9, from which Claim 11-13 depends.

In regard to Claim 17-20, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

6. Claims 1-6, 8, 15, and 17-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hamajima et al. (US 6,068,619).

In regard to Claims 1-4 and 14, Hamajima et al. disclose cellulosic fibers being reacted with a crosslinking agent in the presence of a polyol (whole document, especially column 14, lines 19-59). Hamajima et al. do not expressly disclose that the crosslinked cellulosic fibers are characterized by a Whiteness Index greater than about 69.0.

Hamajima et al. also do not expressly disclose a specific range for the *L* value, a value, *b* value, and percent ISO brightness of the [resulting] individualized intrafiber crosslinked cellulosic fibers. However, when the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference

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discloses all the limitations of a claim (in this case, cellulosic fibers reacted with a crosslinker and a polyol) except for a property or function (in the present case, the individualized intrafiber crosslinked cellulosic fibers are characterized by a Whiteness Index greater than about 69.0) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof.

In regard to Claims 5-6 and 8, the crosslinking agent may be citric acid (column 14, lines 19-26).

In regard to Claim 15, article may be fluff pulp fibers (column 14, lines 12-18).

In regard to Claim 17-20, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fujitani et al. or Hamajima et al.

In regard to Claim 7, Fujitani et al. and Hamajima et al. both disclose the use of citric acid as a polycarboxylic crosslinking agent but do not expressly disclose the use of malic acid. However, it would have been obvious to one of ordinary skill in the art to select malic acid as a polycarboxylic crosslinking agent since citric acid and malic acid are art recognized equivalents for their use as polycarboxylic crosslinking agent, as

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supported by Jewell et al. (US 2002/0096287, [0024]) and the selection of any of these known equivalents to serve as crosslinking agent would be within the level of ordinary skill in the art.

8. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamajima et al.

In regard to Claims 9-10, Hamajima et al. disclose that polyols may be used as crosslinking agent, but does not expressly disclose that the polyol may be sorbitol. However, it would have been obvious to one of ordinary skill in the art to select sorbitol as a crosslinking polyol, since sorbitol is known within the art for use as a polyol crosslinking agent, as supported by Fujitani et al. (column 5, lines 1-23) and it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. *In re Leshin*, 125 USPQ 416.

In regard to Claims 11-13, Claims 11-13 are considered anticipated since presence of sorbitol obviates the Markush group of Claim 9, from which Claim 11-13 depends.

9. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujitani et al. in view of Lagerstedt-Eidrup et al. (US PG Pub. 2003/0208173 A1).

In regard to Claims 15-16, Fujitani et al. disclose the claimed invention except for a product comprising fluff pulp fibers and/or superabsorbent material. Lagerstedt-Eidrup et al. disclose that it is common for an absorbent body to comprise cellulosic fluff pulp

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fibers and superabsorbent material ([0022]). Thus, as supported by Lagerstedt-Eidrup et al., it would have been obvious to one of ordinary skill in the art to use cellulosic fluff pulp fibers and/or superabsorbents within an absorbent product because it is known to combine cellulosic fibers and superabsorbent material.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamajima et al. in view of Lagerstedt-Eidrup et al. (US PG Pub. 2003/0208173 A1). In regard to Claim 16, Hamajima et al. disclose the claimed invention except for a product comprising fluff pulp fibers and/or superabsorbent material. Lagerstedt-Eidrup et al. disclose that it is common for an absorbent body to comprise cellulosic fluff pulp fibers and superabsorbent material ([0022]). Thus, as supported by Lagerstedt-Eidrup et al., it would have been obvious to one of ordinary skill in the art to use cellulosic fluff pulp fibers and/or superabsorbents within an absorbent product because it is known to combine cellulosic fibers and superabsorbent material.

Double Patenting

11. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 7-16 of copending Application No. 10/748930. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-16 of the present application render obvious or are rendered obvious by Claims 1-16 of the copending application.

In regard to Claims 1 of both applications, the major difference between the claims is that Claim 1 of the present application recites the invention as "an absorbent product" while Claim 1 of the copending application recites the invention as "individualized intrafiber crosslinked cellulosic fibers"; the remaining language is essentially the same. Because the individualized intrafiber crosslinked cellulosic fibers can be considered to form an absorbent product and/or the absorbent article comprises the individualized intrafiber crosslinked cellulosic fibers, the two claims are not considered to be patentability distinct from one another.

In regard to Claims 2-4 of both applications, the claims have the same dependency and are identical to each other; therefore, they are not considered to patentability distinct from each other.

In regard to Claims 5-8 of the current application and Claims 5-9 of the copending application, Claims 5-8 of both applications have the same dependency and are identical to each other; therefore, they are not considered to patentability distinct from each other. Claim 9 of the copending application requires the crosslinking agent to be tartaric acid, which is part of the Markush group listing of Claim 5 of both applications. Additionally, it would have been obvious to one of ordinary skill in the art to select tartaric acid as a polycarboxylic crosslinking agent since citric acid, malic acid, and tartaric acid are art recognized equivalents for their use as polycarboxylic crosslinking agent.

In regard to Claims 9-13 of the current application and Claims 10-15 of the copending application, Claims 9-13 of the current application and Claims 10 and 12-16

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are identical to each other; therefore, they are not considered to patentability distinct from each other. As for Claim 11 of the copending application, Claim 10 of the current application requires the presence of sorbitol and, as such, is considered to obviate the Markush group of Claim 11.

In regard to Claims 17-20 of the present application, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 10/748977. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-13 are method claims with define a product that anticipates or renders obvious the claimed structure of Claims 1-20 of the present application.

In regard to Claims 1 of both applications and Claims 12-13 of the copending application, Claim 1 of the copending application results in individualized intrafiber crosslinked cellulosic fiber applied with (i.e. reacted with) an effective amount of a crosslinking agent in the presence of an effective amount of a polyol..., wherein the

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Whiteness Index of the individualized intrafiber cellulosic crosslinked fibers is greater than 69.0. This structure is equivalent to that of Claim 1 of the current application, so the previous noted modifications and a rearrangement of the phrases is made in the last two lines of Claim 1 of the copending application. Additionally, the individualized intrafiber crosslinked cellulosic fibers can be considered to form an absorbent product and/or the absorbent article comprises the individualized intrafiber crosslinked cellulosic fibers. In regards to Claims 12-13 of the present application, the method of forming the product is not relevant to the issue of patentability of the product itself; therefore, the limitations of Claims 12-13 have been giving little patentable weight as they pertain to the patentability of the resulting product. As such, the claims are not considered to be patentability distinct from one another.

In regard to Claims 2-4 and 14 of the current application, when the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, cellulosic fibers crosslinked with a crosslinking agent and polyol) except for a property or function (in the present case, specific *L*, *a*, *b*, and ISO brightness values) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

In regard to Claims 5-13 of the present application and Claims 2-11 of the copending application, Claims 5-13 of the current application and Claims 2-5, 7-8, and 10-11 are identical to each other; therefore, they are not considered to patentability distinct from each other. As for Claim 6 of the copending application, Claim 10 of the current application requires the presence of sorbitol and, as such, is considered to obviate the Markush group of Claim 6. Claims 12-13 of the current application requires the presence of malitol or lactitol and, as such, are considered to render obvious the Markush group of Claim 9.

In regard to Claims 17-20 of the present application, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8, 11-12, and 14 of copending Application No. 10/815206. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-20 of the present application obviate Claims 1-8, 11-12, and 14 of the copending application.

In regard to Claim 1 of both applications and also Claim 14 of the copending application, the major difference between claims is that Claim 1 of the copending application defines the invention as “bleached crosslinked fibers” while the current application define the invention as “an absorbent product.” However, both product comprise the same materials. The copending application does required the use of “bleached” cellulosic fibers; however, such fibers are still “cellulosic fibers” as claimed in the current application. Furthermore, the current application does not exclude the use of bleached cellulosic fibers as the cellulosic fibers; moreover, the possible use of bleached fibers is disclosed within the specification of the current application (page 9). Additionally, the individualized intrafiber crosslinked cellulosic fibers can be considered to form an absorbent product and/or the absorbent article comprises the individualized intrafiber crosslinked cellulosic fibers. Claim 14 of the copending application further recites the use of the fibers in an absorbent product. As such, the claims are not considered to be patentability distinct from one another.

In regard to Claims 2-4 and 14 of the current application and also Claims 11 and 12 of the copending application, when the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, cellulosic fibers crosslinked with a crosslinking agent and polyol) except for a property or function (in the present case, specific *L*, *a*, *b*, and ISO brightness values) and the examiner can not determine

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whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

In regard to Claims 5-8 of the current application and Claims 2-5 of the copending application, Claims 5-8 of both applications have the same dependency and are identical to each other; therefore, they are not considered to patentability distinct from each other.

In regard to Claims 9-11 of the current application and Claims 6-8 of the copending application, Claims 9-10 of the current application and Claims 6 and 8 are identical to each other; therefore, they are not considered to patentability distinct from each other. As for Claim 7 of the copending application, Claim 10 of the current application requires the presence of sorbitol and, as such, is considered to obviate the Markush group of Claim 11.

In regard to Claims 17-20 of the present application and also Claim 14 of the copending application, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Arkens et al. (US 5,427,587), Hansen et al. (US 6,340,411), Jewell et al. (US 6,752,944), Hamajima et al. (US 5,865,822).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Keshia Gibson
Examiner
Art Unit 3761

klg 1/31/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
